IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4559 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

MUNIRMIYA MUSSAINMIYA SHEIKH - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2005

ORAL JUDGMENT

Rule. In this petition under Article 226/227 of the Constitution of India, the petitioner, Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Vadodara

in Reference (IT) No. 210 of 1999 in allowing the said Reference and quashing and setting aside the order of punishment imposed by the disciplinary authority dated 22.4.1994 by which the punishment of stoppage of 4 increments with permanent future effect was imposed.

2. The respondent workman was serving as a Driver and a departmental enquiry was initiated against him for rash and negligent driving of S.T. Bus on 22.4.1994 by which one cyclist dashed with the bus and died. After conclusion of departmental enquiry and holding the charge of rash and negligent driving proved against him the disciplinary authority imposed the punishment of stoppage of 4 increments with permanent future effect. Being aggrieved and dissatisfied with the order of punishment imposed by the disciplinary authority withholding/stoppage of 4 increments with permanent future effect the respondent workman raised the industrial dispute which was referred to Industrial Tribunal, Vadodara, for adjudication being Reference (IT) No. 210/1999. The Industrial Tribunal, on appreciation of evidence and considering even the report of the Reporter to the effect that when the respondent-workmen was driving the bus one motorcycle came with excessive speed and dashed with the cyclist as the motorcyclist lost control and as a result the cyclist dashed with the bus on the front portion and on the driver's side of the bus and he was injured and thereafter he died.

The Industrial Tribunal held that in view of the aforesaid fact there was no negligence on the part of the respondent workman and that he was not responsible for the accident in question and/or the death of the cyclist and holding that the charge of rash and negligent driving on the part of the respondent workman is not proved, while allowing the Reference the Tribunal quashed and set aside the order passed by the disciplinary authority of withholding of 4 increments with permanent future effect. Being aggrieved and dissatisfied with the judgment and order passed by the Industrial Tribunal, Vadodara in Reference (IT) No. 210/1999 in allowing the said Reference and quashing and setting aside the order of punishment imposed by the disciplinary authority, the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Ashish M. Dagli, learned advocate appearing on behalf of the petitioner has half-heartedly submitted that if the respondent workman would have taken more care the accident could have been avoided and therefore it is submitted that the Industrial Tribunal has materially erred in interfering with the order of punishment imposed by the disciplinary authority. However, Shri Dagli is not in a position to get out of the reports submitted by the Reporter wherein the Reporter has specifically mentioned in the Report that when the bus was in

motion one motorcyclist from the opposite side came with excessive speed and he dashed with the cyclist due to which the motorcyclist lost the control and as a result the cyclist dashed with the bus on the front portion and on the driver's side of the bus. If the aforesaid is the fact and the way in which the accident had taken place and the Industrial Tribunal has come to the conclusion on appreciation of evidence that there was no negligence on the part of the respondent workman and/or that the respondent driver cannot be said to be responsible for the accident in question and exonerated the driver, it cannot be said that there is any illegality committed by the Industrial Tribunal. Shri Dagli is not in a position to satisfy this Court how the finding of fact arrived at by the Industrial Tribunal is contrary to the evidence on record and/or perverse. As rightly held by the Industrial Tribunal, no evidence has been led on behalf of the petitioner that what was the care which was required to be taken by the respondent workman as alleged which was not taken by him. Merely by stating that if more care would have been taken the accident could have been avoided is not sufficient. According to this Court, considering the manner in which the accident had taken place and the report of the Reporting Officer as stated hereinabove, the Industrial Tribunal was justified in quashing and setting aside the order passed by the disciplinary authority. This is a petition under Article 226/227 of the Constitution of India, and this Court is not required to reappreciate

the evidence on record, more particularly when it is found that the finding arrived at by the Industrial Tribunal is neither contrary to evidence on record and/or perverse. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed.

4. For the reasons stated above, the petition fails. The judgment and order passed by the Industrial Tribunal, Vadodara in Reference (IT) No. 210/1999 in July 2003 is hereby confirmed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.